Arbitration CAS anti-doping Division (OG Rio) AD 16/010 International Olympic Committee (IOC) v. Gabriel Sincraian, award of 8 December 2016

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Weightlifting
Doping (testosterone)

I. FACTS

1. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology on the basis of the materials supplied by the parties. Additional facts may be set out, where relevant and to the extent necessary, in the other chapters of the present award.

2. On 12 August 2016, Mr. Gabriel Sincraian (the "Athlete") underwent an in-competition doping control (urine). The results of the analysis of the Athlete's A Sample revealed the presence of exogenous Testosterone, which is a non-specified substance prohibited under S1.1b of the WADA Prohibited List.

3. On 20 August 2016, the International Olympic Committee (the "IOC") informed the Athlete through his NOC that the results of the analysis of his A Sample

4. On 12 August 2016, the analysis of the Athlete's B Sample took place. Its results confirmed the finding in the A Sample.

5. On 21 August 2016, the IOC filed an application with the Anti-Doping Division of the Court of Arbitration for Sport ("CAS ADD") asserting an anti-doping rule violation("ADRV") against the Athlete and seeking various sanctions against him. In particular, the IOC asserts that the presence in his sample of the prohibited substance in question, mandates the immediate provisional suspension of the Athlete in accordance with Article 7.6.1 of the IOC Anti-Doping Rules and the enforcement of an ADRV in accordance with Article 2.1 of the IOC ADR.

6. The IOC seeks the following relief:

   As a provisional relief

   1. *The Athlete be provisionally suspended.*

   Principally

   2. *The Application of the International Olympic Committee is admissible.*

3. *The Athlete be found guilty of an anti-doping rule violation in accordance with Article 2.1 of the IOC ADR.*

4. *The results obtained by the Athlete in the Men's Weightlifting 85 kg event at the Olympic Games Rio 2016, in which the Athlete ranked 3rd and for which he received a bronze medal, be disqualified with all Consequences, including the forfeiture of the medal, Olympic pin, points and other prizes.*

5. *The Athlete be declared ineligible to compete in all Competitions in which he has not yet participated at the Olympic Games Rio 2016.*

6. *The Athlete be excluded from the Olympic Games Rio 2016.*

7. *The Athlete's accreditation (number 1087476) be withdrawn.*

8. *The NOC of Romania be requested to secure the return to the IOC, as soon as possible, of the medal, the medalist pin, and the diploma awarded in connection with the Men's Weightlifting 85 kg event to the Athlete.*

9. *The matter of the Athlete be referred to the International Weightlifting Federation to modify the results of the above-mentioned event accordingly and to impose Consequences that extend beyond the Olympic Games Rio 2016 upon the Athlete.*

7. On 26 September 2016, in accordance with Article 15 lit. b of the CAS ADD Rules and Article 7.6.3 of the IOC Anti-Doping Rules, the Sole Arbitrator invited the Athlete to file written comments on the IOC's request for provisional measures. Such response, if any, was to be filed by 29 September 2016. No response was provided.

8. On 29 September 2016, the IOC withdrew its request for provisional measures considering that the Olympic Games had concluded and thus, its request had become moot.

9. On 7 October 2016, the Sole Arbitrator invited the parties to file written submissions in support of their positions on the merits of the IOC's claim no later than 21 October 2016. Within such deadline, the parties were also invited to state their position as to whether a hearing was necessary in these proceedings as a means of resolving the merits.

10. On 17 October 2016, the IOC filed its additional observations and amended its prayers for relief as follows:

Principally:

1. *The Application of the International Olympic Committee is admissible.*

2. *The Athlete shall be found guilty of an anti-doping rule violation in accordance with Article 2.1 and/or 2.2 of the IOC ADR.*

3. *The results obtained by the Athlete in the Men's Weightlifting 85 kg event at the Olympic Games Rio 2016, in which the Athlete ranked 3rd and for which he received a bronze medal, shall be disqualified with all Consequences, including forfeiture of the medal, diploma and medalist pin, which the Athlete shall be ordered to return.*

4. *The National Olympic Committee of Romania shall be ordered to secure the return to the IOC, as soon as possible, of the medal, the medalist pin and the diploma awarded to the Athlete.*

5. *The matter shall be referred to the International Weightlifting Federation to modify the results of the above-mentioned event accordingly and to conduct the result management in connection with Consequences that extend beyond the Olympic Games Rio 2016.*

11. The Athlete did not file any written submission on either procedure or merits.

12. On 8 November 2016, the parties were advised that the Sole Arbitrator deemed himself sufficiently well informed to render a final decision in this procedure without a hearing.

II. LEGAL ASPECTS

A. Jurisdiction

13. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS ADD its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games (Art. 8.2.2 IOC ADR).

14. Pursuant to Article 8.1.1 of the IOC ADR:

"Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules".

16[1]. Pursuant to Article 1 of the Arbitration Rules applicable to the CAS ADD:

"The CAS ADD shall be the first instance authority for doping-related matters, responsible for the conduct of the proceedings and the issuance of decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR".

17. The parties do not contest the jurisdiction of the CAS ADD to decide the dispute.

18. It follows that the CAS ADD has jurisdiction over the Application.

B. Applicable Law

19. Article 17 CAS ADD Rules provides as follows:

"The Panel shall rule on the dispute pursuant to the IOC ADR, the applicable regulations, Swiss Law and general principles of law".

[1] [NB: Para. 15 omitted in original award].

20. The Introduction to the IOC ADR refers *inter alia* to the scope of the Rules and stipulates the following:

"These Rules apply in connection with the Olympic Games Rio 2016. They shall, without limitation, apply to all Doping Controls over which the IOC has jurisdiction in connection with the Olympic Games Rio 2016.

These Rules shall, without limitation, apply automatically to (a) the IOC; (b) Athletes entered in the Olympic Games Rio 2016 …

(…)

Athletes entered in the Olympic Games Rio 2016 or who have otherwise been made subject to the authority of IOC in connection with the Olympic Games Rio 2016 are bound by these Rules as condition of eligibility to participate in the Olympic Games Rio 2016…".

21. The Sole Arbitrator hereby confirms that he will apply primarily the IOC ADR, and subsidiarily, Swiss Law and general principles of law. He confirms that these proceedings are governed by the CAS ADD Rules and by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PILA"). PILA applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS ADD Rules and as a result, the choice of Lausanne, Switzerland as the seat of the CAS ADD and the Panel, pursuant to Article 7 of the CAS ADD Rules.

C. Legal Framework

22. The articles of the Applicable Law relevant to the merits of this Application are the following:

23. Art. 2 IOC ADR provides as follows:

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their*

Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample …, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample…;*

2.1.3 *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*

2.1.4 *As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.*

24. Art. 3.1 IOC ADR provides as follows:

3.1 Burdens and Standards of Proof

The IOC shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made.

This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

25. Art. 10 IOC ADR provides as follows:

10.1 Disqualification of Results in the Olympic Games Rio 2016

An anti-doping rule violation occurring during or in connection with the Olympic Games Rio 2016 may, upon the decision of the CAS Anti-Doping Division, lead to Disqualification of all of the Athlete's individual results obtained in the Olympic Games Rio 2016 (or in one or more Events or Competitions) with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

Factors to be included in considering whether to Disqualify other results in the Olympic Games Rio 2016 might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative further to Testing conducted after other Competitions.

10.1.1. *If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in*

Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.

…

10.2 Ineligibility and other consequences

10.2.1 Should an Athlete or other Person be found to have committed an anti-doping rule violation, the CAS Anti-Doping Division may declare the Athlete or other Person ineligible for such Competitions at the Olympic Games Rio 2016 in which he/she has not yet participated, along with other sanctions and measures which may follow, such as exclusion of the Athlete and other Persons concerned from the Olympic Games Rio 2016 and the loss of accreditation.

No Person who has been declared ineligible may, during the period of ineligibility, participate in any capacity in the Olympic Games Rio 2016.

10.2.2 *In accordance with Article 7.1.2, responsibility for results management in terms of sanctions beyond the Olympic Games Rio 2016 itself shall be referred to the applicable International Federation.*

10.3 Automatic Publication of Sanction

A mandatory part of each sanction shall include automatic publication, as provided in Article 13.3.

III. MERITS

26. The results of the analysis of the Athlete's A and B Sample revealed the presence of exogenous Testosterone, which is a non-specified substance prohibited under S1.1b of the WADA Prohibited List.

27. The Athlete has not challenged the result of the analysis or made any other submission to the effect that he is not guilty of an ADRV.

IV. CONCLUSION

28. In view of the above considerations, the Sole Arbitrator finds that the IOC met its burden of proof under Art. 3.1 IOC ADR. The documents adduced by the IOC establish sufficient proof, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete committed an anti-doping rule violation under Art. 2 IOC ADR.

29. As the Athlete committed an anti-doping rule violation in connection with the Olympic Games Rio 2016, the Sole Arbitrator finds it appropriate to impose on the Athlete the following consequences:

    1. The Application filed by the IOC is admissible.

2. The Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016.
3. All results obtained by the Athlete in the Olympic Games Rio 2016, including the bronze medal in the Men's Weightlifting 85 kg event, are disqualified with all consequences, including forfeiture of all medals, diplomas, pins, points and prizes.
4. The National Olympic Committee of Romania is requested to secure the return to the IOC of the medal, medallist pin, and diploma given to the Athlete.
5. The responsibility for the Athlete's results management in terms of sanction and Consequences beyond the Olympic Games Rio 2016 is referred to the International Weightlifting Federation being the applicable International Federation.

30. With respect to item 4 of previous paragraph, the Sole Arbitrator notes that the National Olympic Committee of Romania is not a party to these proceedings and susceptible to an order made by him. However, the duty to make the return of the items sought by the IOC lies first with the Athlete. The assistance of the NOC is part of its general duty of collaboration with the IOC.